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685. A corporation is an entirety, irrespective of the persons who own all of its stock, and the fact that one person owns all the stock does not make him and the corporation one and the same person. *Ulmer v. Lime Rock R. Co.*, 98 Me. 579, 57 Atl. 1001, 1007, 66 L. R. A. 387.

CORPORATIONS—TRANSFER OF SHARES—BONA FIDE PURCHASERS—ESTOPPEL.—Plaintiffs purchased certain stock certificates, believing the stock to have been fully paid, said certificates not showing upon their faces upon what terms they were issued, and now seek to enjoin the sale of the stock for a delinquent assessment on the unpaid subscriptions. *Held*, that a corporation is not required to have the certificate show the terms on which it was issued, and purchasers of shares have no right to assume that the stock is fully paid, and no estoppel by representation can be invoked against the corporation. *O'Dea et al. v. Hollywood Cemetery Ass'n. et al.* (1908), — Cal. —, 97 Pac. 1.

The above decision is not in harmony with the weight of authority upon this point. After stating that a purchaser of stock is entitled to rely on statements in the corporate books that stock is fully paid up, *COOK, CORPORATIONS*, § 50, says, "the law goes still further and holds that where a person in open market, in good faith and without notice, purchases certificates, such stock is to be deemed 'paid up' in his hands, and he is protected as a *bona fide* purchaser, even though there is nothing on the face of the certificates stating that they are paid up. *Johnson v. Lullman*, 15 Mo. App. 55." To the same effect *CLARK AND MARSHALL, CORPORATIONS*, § 564f. A party purchasing a certificate of stock which does not state whether it is paid up or not may assume that it is paid up, and will be protected in that assumption. *DuPont v. Tilden*, 42 Fed. 87. Since a corporation can readily guard itself as well as the purchaser by expressing on the face of such shares as are not paid up the fact that they are subject to call for unpaid subscription price, and in view of the important character assumed by shares of stock in both speculative and investment markets, a bona fide purchaser, for value and without notice that the subscription price is unpaid, should be protected as between himself and the corporation. *West Nashville Planing Mill Co. v. Nashville Savings Bank*, 86 Tenn. 252, 6 Am. St. Rep. 835, 2 WILGUS CORP. CASES, 1695. Also holding bona fide purchaser, without notice that the stock is not fully paid, not liable for the unpaid subscription price are *Erskine v. Loewenstein*, 82 Mo. 301; *Wintringham v. Rosenthal*, 25 Hun 580.

DAMAGES—MEASURE FOR WRONGFUL LEVY AND DETENTION.—Plaintiff sues on the official bond of a constable to recover the damages suffered by him by reason of the wrongful levy by the constable on and sale of the plaintiff's exempt team, claiming damages to the value of the team plus the value of their use for two and a half years (from the time of the levy). The constable was informed of the claim of exemption before sale and demanded and received an indemnity bond. Defendants objected to proof of plaintiff's inability to buy another team and to proof of the value of the

use of the team to him, claiming that in the absence of malice the measure of damages in trover in such cases is the value and interest. Plaintiff had judgment for \$225 for the value of the team and \$375 for the value of their use to him as a market gardener, of which he had been deprived by the levy. On error by defendants, the Court of Appeals *held* that the value and interest would be inadequate compensation, reasoning that the value and interest is merely the presumptive damages in absence of proof of more or less; but the court considered that the recovery was excessive, because the value should have been computed on rental value by the month or year, and not by the day. *Railey et al. v. Hopkins* (1908), — Tex. Civ. App. —, 110 S. W. 779.

In cases of wrongful sales on execution it has quite generally been held that, in the absence of malice, the true measure of damages to the owner in trover is not the retail value [*State ex rel Hayden v. Smith* (1862), 31 Mo. 566], but the fair market value [*Pope v. Benster* (1894), 42 Neb. 304, 60 N. W. 561, 47 Am. St. Rep. 703; *Gibson v. Stevens* (1834), 7 N. H. 352; *Cleveland v. Tufts* (1888), 69 Tex. 580, 7 S. W. 72], with interest [*Spencer v. Brighton* (1860), 49 Me. 326; *Murphy v. Sherman* (1878), 25 Minn. 196; *Walker v. Borland* (1855), 21 Mo. 289; *State ex rel Hayden v. Smith* (1862), 31 Mo. 566; *Felton v. Fuller* (1857), 35 N. H. 226;], and such special damages in addition as the facts may show [*Felton v. Fuller* (1857), 35 N. H. 226; *Anderson v. Sloane* (1888), 72 Wis. 566, 40 N. W. 214, 7 Am. St. Rep. 885], though more than they sold for. [*Thompson v. Thompson* (1793), 1 N. J. L. (Coxe) 159; *Rogers v. Fales* (1847), 5 Pa. St. (5 Barr) 154.] In trover for levy and sale of a team worth \$267 and known by defendant to be exempt a verdict for \$435.59 was held not excessive. *Lynd v. Picket* (1862), 7 Minn. 184 (Gil. 128), 82 Am. Dec. 79. A similar case was *Elder v. Frevert* (1884), 18 Nev. 446.

DEEDS—DISTINGUISHED FROM WILLS—POWER OF DISPOSITION RESERVED.—An instrument in the form of a deed was executed, duly acknowledged and recorded, purporting to grant, bargain and sell and convey land to a grantee, reserving to the grantor a life estate, together with the power “to mortgage, incumber, sell, lease, convey or otherwise dispose of said real estate,” and containing a recital and condition that in case the grantee should die before the grantor, the estate conveyed should revert to the grantor. *Held*, that such instrument is not testamentary in character, but is a deed, conveying a present title to the grantee, subject to a life estate in the grantor, the reservation of the power of disposition referring to the reserved life estate. *Brady v. Fuller et al.* (1908), — Kan. —, 96 Pac. 854.

On the particular question as to the effect of a reservation of the power of disposition of the estate conveyed, the cases are at variance, but the weight of authority seems to be against the construction adopted in this case. That where the grantor reserves to himself the use and enjoyment and also the power of disposition, during his life, of the estate granted, the instrument conveys no present interest, and is consequently testamentary in character, has been held in the following cases: *Ellis v. Pear-*